
(2000) 08 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1397 of 2000

Ved Prakash

APPELLANT

Vs

Executive Engineer

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 90 FLR 338 : (2001) 1 LLJ 1224

Hon'ble Judges : S.S. Sudhalkar, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Mr. A.P. Bhandari, for the Appellant; Mr. Raghbir Chaudhary, D.A.G., Haryana, for the Respondent

Judgement

S.S. Sudhalkar, J.—Petitioner was working with respondent No. 1 as Assistant Pump Driver. By Memo No. 1957 dated 7.8.1975 (copy AnnexureP/12) the services of the petitioner were terminated. The contents of the letter are given as under :-

"With reference to above letter, you have submitted your explanation that you were present on your duty and working on 26.7.1975. But you were found sleeping on 25.7.1975. During the inspection Shri f.K. Anand and Shri I.S. Dalai, S.O. were with me at the time of inspection and you are Idling a straightaway lie. You are most irregular in your duties and this fact is clear from your previous record. Your explanation submitted by you is away from the facts.

It is further added that you are absent from your duty from 25.7.1975 A Noon till today. It indicates that you are not interested to join your duties. Your service is automatically discontinuous (discontinued ?) for remaining absent from your duty for more than 10 days at a stretch without prior permission and intimating to this office."

Petitioner issued a demand notice dated 25.7.1975. The matter was referred to the Labour Court. The Labour Court by its award dated 6.8.1999 awarded only

Rs. 30,000/- as compensation in lieu of reinstatement to the petitioner. Feeling aggrieved by the said award, the petitioner (has filed) this writ petition.

2. We have heard learned counsel for the parties. Counsel for the petitioner argued that the petitioner was not given the charge-sheet. No enquiry was held against him and his termination of service is, therefore, illegal. Counsel for the respondent argued that the petitioner absented from service and therefore, the memo dated 7.8.1975 was justified. He also argued that this is a belated matter and therefore, this writ petition is liable to be dismissed on this ground alone. Regarding delay, learned counsel for the petitioner has argued that respondent No. 1 had filed C.W.P. No. 1946 of 1982 which was dismissed on 24.4.1997 and therefore, the delay has been caused due to the pendency of the writ petition. We agree with this submission of the learned counsel for the petitioner. Regarding termination, the Labour Court has observed as under :-

"Thus on thorough perusal of oral as well as of documentary evidence, it is held that the termination of the workman by means of order dated 7.8.1975 W-3 was though justified but not in order. The said order was passed when workman absented himself, but no enquiry what-so-ever was conducted nor any opportunity of being heard was given to him before passing the said order. Thus his termination is held as legal retrenchment but not in order but keeping in view the peculiar facts of the case and time involved it would be just and proper that only a compensation is paid to him in lieu of reinstatement as held in *Kailash Parshad Sharma v. Presiding Officer, Labour Court, Faridabad*. PLR Vol. 110,1995(2)366: 1995(3) SCT 198 (P&H), wherein also the workman remained absent for more than a decade. So, in the circumstances a sum of Rs. 30,000/- is to be paid to the workman as compensation in lieu of reinstatement. This issue is decided accordingly."

We do not agree with the reasons given by the Labour Court. No enquiry was held and, therefore, the termination cannot be said to be legal. Learned counsel for respondent No. 1 argued that the petitioner absented himself and therefore, the memo dated 7.8.1975 was quite justified. However, it cannot be held to be justified because on the very date, the demand notice was given by the petitioner. Therefore, we find that the Labour Court was not correct while giving compensation in lieu of reinstatement. The petitioner could be entitled to full back wages. However, counsel for the petitioner stated that the petitioner may be awarded 50% back wages.

3. In view of the above, this writ petition is allowed. The petitioner is ordered to be reinstated with continuity of service and other benefits. However, the back wages shall be restricted to 50%.

4. Petition allowed.